IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-08-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.382 of 2007

P.Vijaya Raghunathan .. Appellant/complainant

-vs-

1. M/s Green Cotton Garments
   rep. by its Managing Directors
   1.R.G.Badri,
   2.Sathis Kumar

2. R.G.Badri
   Partner
   M/s Green Cotton Garments

3. C.S.Sathis Kumar
   Partner
   M/s Green Cotton Garments .. Respondents/accused

This appeal is filed against the Judgment made in C.C.No.332/2006 dated 28.12.2006 on the file of the Second Additional District Munsif, Erode.

For appellant : Mr.I.C.Vasudevan

For respondents : Notice served(proof filed)

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JUDGMENT

This appeal has been preferred against the Judgment in C.C.No. 332 of 2006 on the file of the Second Additional District Munsif, Erode.

2. The appellant as the complainant had preferred a private complaint under Section 200 of Cr.P.C. for an offence under Section 138 of the Negotiable Instruments Act 1881 against the accused alleging that the accused, after borrowing Rs.15,00,000/- for the purpose of improving their business, had drawn a cheque for Rs.15,000/- on 5.9.2001 in favour of the complainant in order to discharge partially the above said subsisting debt. When the said cheque was presented in the Corporation Bank, Erode Branch, on 17.9.2001, the same was returned with an endorsement that there is no sufficient fund in the account of the accused to honour the same. A notice was issued by the complainant to the accused informing about the dishonour of the impugned cheque, which was received by the accused and a reply was sent by the accused, for which a rejoionder notice was sent by the complainant.

3. The learned Judicial Magistrate had issued non bailable warrant for securing the accused, since he has failed to appear before the trial Court inspite of receipt of the summons while non bailable warrant against the accused was pending execution, even on the date of the pronouncement of the Judgment on 28.12.2006 in C.C.No.332 of 2006 the trial Court has dismissed the case for non-appearance of the complainant. The reasoning assigning for dismissing the complaint by the learned trial Judge is that the complainant was absent on 19.12.2006 inspite of service of notice dated 22.11.2006 under letter Nos.1790 and 1791. But the fact remains that the non bailable warrant is pending against the accused even on 28.12.2006, the date on which the judgment was pronounced. I am of the view that there is no necessity for the complainant to appear on 19.12.2006, since the non bailable warrant was pending against the accused. The proper course open to the learned trial Judge is to secure the accused first by giving necessary instructions to the police to execute the non bailable warrant and after furnishing copies to the accused, only he can compel the appearance of the complainant.

4. The learned counsel appearing for the appellant would contend that C.C.No.332 of 2006 was originally pending before the learned Judicial Magistrate No.1, Erode and subsequently been transferred to the file of the Second Additional District Munsif, Erode. Under such circumstances, the learned counsel appearing for the appellant undertakes that he will ask the complainant to be present on 29.8.2007 before the trial Court.

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6. In fine, the appeal is allowed on condition that the complainant appears before the trial Court on 29.8.2007 and on his appearance, the learned trial Judge shall restore C.C.No.332 of 2006 to her file and after giving necessary instructions to the police to secure the accused by executing the non bailable warrant, shall proceed with the case in accordance with law. Failure to comply with the appearance of the complainant on 29.8.2007 before the trial Court, the appeal shall deem to have been dismissed.

sg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Second Additional District Munsif, Erode

2. -do-through the Chief Judicial Magistrate ,Erode

3. The Section Officer, Criminal Section,
   High Court, Madras.

4. Section Officer, V.R.Section,
   High Court, Madras.

+1 cc to M/s.I.C.vasudevan, Advocate Sr.No.49883.

AKR(CO)
dcp/9.8

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